

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(8 Dunman Way)		
12 th Election District	*	OFFICE OF
7 th Council District		
Bolton Hill Investments, LLC.	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
	*	FOR BALTIMORE COUNTY
Petitioner		
	*	Case No. 2020-0003-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of a Petition for Special Hearing filed on behalf of Bolton Hill Investments, LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to §§ 230.1.A.1 and 432A.1.A of the Baltimore County Zoning Regulations (“BCZR”) to approve a use permit for an Assisted Living Facility (“ALF”) for more than 15 residents in an existing building in a BL-CCC zone adjacent to a DR 16 zone. A site plan and an amended site plan were marked and admitted as Petitioner’s Exhibit 1 and 1A, respectively.

Petitioner’s Case

Petitioner, Raphael Cassagnol, of Bolton Hill Investments, LLC, appeared in support of the petition. Jennifer Busse, Esq. represented Petitioner. The following Protestants/interested citizens were in attendance: Mary DiLesse, Barbara Kenney, and Mary Davidson, who are all homeowners in the immediate vicinity. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”) in support of the petition.

Ms. Busse gave a general introduction and explanation of the proposed Assisted Living Facility (“ALF”). Mr. Cassagnol then testified at some length about how he identified the property

and why he believes this proposed ALF is exceptionally compatible with the neighborhood. Specifically, he noted that the property, which had formerly been a parochial elementary school, has been vacant for about ten years. He stated that he has done extensive research of the area's demographics and that there is a shortage of assisted living facilities and a great and growing demand for them in the Dundalk area. He explained that they intend to have a maximum of 32 residents and that there will be a staff of between 3 and 5 persons there 24 hours a day. He has already hired an experienced ALF professional to manage the facility. He also explained that they will be licensed by the State of Maryland, and that the State will perform regular inspections to insure they are in full compliance with all state laws. He explained that this is not going to be a nursing home. These residents will be largely self-sufficient and will only need assistance with the normal things associated with aging. He averred that none of them will have vehicles so he believes the proposed ALF will have very little impact on parking in the area. He showed the Protestants detailed architectural elevations of the floor plans and exterior. He stated that he is committed to bringing an aesthetically appropriate building to the neighborhood, and hopes that it will generate more redevelopment in this historic district. He answered numerous questions from the Protestants on a variety of issues, chief among them, parking and compatibility.

Brian Dietz, a licensed land surveyor, also testified (based on his credentials and experience, he was accepted as an expert in land use and development and in the Baltimore County Zoning Regulations. He explained that this proposed Class III ALF is permitted under BCZR § 432A.1.A.4 because it is "immediately adjoining" a DR 16 zone within the meaning of BCZR § 230.1.A.1. This was demonstrated by the introduction of Petitioner's Exhibit 2, an aerial zoning map from "My Neighborhood."

He also testified that this site in Dundalk is within the National Register of Historic Places.

A Baltimore County ArcGIS map was admitted as Petitioner's Exhibit 3, and it shows that this site is on the very edge, but within, what is referred to on the exhibit as a "National Register Historic District." Mr. Dietz testified that this qualifies the site for the exemption of BCZR § 409.6, which provides that "[n]o parking spaces are required for residential buildings contributing to the historic character of an area, if such buildings have been designated on the National Register of Historic Places and within a CT of BL-CCC District."

Finally, Dietz was of the opinion that this proposed use was compatible with the neighborhood and was generally within the spirit and intent of the BCZR.

Protestants' Case

The neighborhood witnesses explained that they have lived in the neighborhood for many years. They live in large single family homes on Dunglow and Belclare Road. They are understandably concerned about the decline of the neighborhood and they voiced concerns about this proposed use because there are already several senior housing facilities in the area. They are also concerned that the site plan does not provide any parking for the facility. The undersigned explained that this proposed ALF is a permitted use under the BCZR as long as they obtain the required use permit. They understood this but simply wish there was more commercial/retail investment being made in the area.

Findings of Fact and Conclusions of Law

The Department of Planning submitted extensive comments in favor of this proposed ALF. As required by BCZR § 432A.1.D, the DOP made a specific compatibility finding under B.C.C. § 32-4-402 that this "is an ideal location for an assisted living facility like the one proposed." Based on the testimony and exhibits that were presented I agree.

Therefore, the only question remaining concerns the parking exemption they are seeking under BCZR § 409.6. As noted above, the site plan provides for zero off street parking spaces. The normal requirement for an ALF is that “at least 1 usable off-street parking space shall be provide for each 3 beds.” The Petitioner therefore must qualify for the “catch-all” National Historic exception in § 409.6 that pertains to all residential and lodging uses. As noted above, this exception states that “[n]o parking spaces are required for residential buildings contributing to the historic character of an area, if such buildings have been designated on the National Register of Historic Places and within a CT of BL-CCC District.” In their comments the DOP stated that they “will defer to Permits Approvals and Inspections on the zoning language regarding parking.” There are, however, no comments in the file from PAI on this issue. I must, therefore, make this interpretation.

The only record evidence concerning this issue is the testimony of Mr. Dietz that the building in question meets this definition, and Petitioner’s Exhibit 3 which shows that the site lies within a “National Register Historic District.” Notably, there was no evidence submitted which affirmatively established that this particular building, i.e., “such building”, has “been designated on the National Register of Historic Places” as required by § 409.6. On the other hand, there is also no evidence to the contrary, and there is no question that it *is* in a BL-CCC District, as required. The plain language of § 409.6 suggests that the *building itself* must have been specifically “designated on the National Register of Historic Places” in order to qualify for this exemption; and further, that it “is contributing to the historic character of the neighborhood.”

In this case photos of the building (Petitioner’s Exhibit 4) show that it is a non-descript brick building probably built between 1930 and 1950; and according to the testimony it was first used as offices of C&P Telephone Company, and later as classrooms for St. Rita’s elementary

school. In short, there is nothing “historic” about the building in the normal sense of the word. The undersigned asked counsel for Petitioner whether it was their position that every building within the “National Register Historic District”¹ would meet the requirements for the § 409.6 parking exemption and counsel confirmed that this is their position.

While this seems to me to be a strained interpretation I will use it in the instant case because there is no evidence or argument to the contrary and because the DOP believes that this is “an ideal location for an assisted living facility like the one proposed.” Further, on this issue, the Petitioner confirmed that the residents of the ALF will not be permitted to have vehicles, and this will be a condition of the use permit. Moreover, this property has been vacant for ten years and the Petitioner is going to invest substantial financial resources in redeveloping the property in order to provide much needed assisted living housing. Finally, I find that this use permit can be granted within the spirit and intent of the BCZR and without harming the public health, safety and general welfare.

THEREFORE, IT IS ORDERED this 10th day of **March, 2020** by this Administrative Law Judge, that the Petition for Special Hearing to approve a use permit for an Assisted Living Facility (“ALF”) for more than 15 residents in an existing building in a BL-CCC zone adjacent to a DR 16 zone, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. No residents of this Assisted Living Facility will be permitted to have a motor vehicle at the facility.

¹ I note that the language “National Register Historic District” does not precisely match the language of § 409.6, which refers to the “National Register of Historic Places.” I further note that on Petitioner’s Exhibit 3 there are two buildings which are designated as a “National Register of Historic Places Feature,” which appears to perhaps be the sort of “designation” that is envisioned by § 409.6.

Any appeal of this decision must be filed within thirty (30) days of the date of this Order.

Signed _____
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:slh